

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

No. 38518-0-II

Respondent,

v.

BRENT J. ROSIE,

UNPUBLISHED OPINION

Appellant.

Hunt, J. — Brent Rosie appeals his jury conviction for fourth degree assault. He argues that the evidence was insufficient to support his conviction. We affirm.

**FACTS**

On July 21, 2008, Brent Rosie went to his mother's (Cathy Colbert's) home with Mark Grimes and Jerry Clark to retrieve Rosie's truck. Upon arriving, Rosie, Grimes, and Clark learned that the truck's battery and alternator were missing. Rosie became angry, walked to his mother's house, and confronted Colbert.

According to Colbert, Rosie grabbed her by her throat, accused her of taking his property, and demanded its return. When Colbert threatened to call the police, Rosie left. RP at 64-65. Colbert called the police. Deputy Justin Cotte responded and noted that Colbert appeared distraught but had no injuries on her throat.

### Procedure

The State charged Rosie with one count of second degree assault, with a special allegation that Rosie had committed assault against a family or household member.

Colbert testified consistently with the facts listed above.<sup>1</sup> No other witnesses testified about having seen the assault. Ashley Tibbetts, Colbert's daughter, had been at Colbert's home that day, but she did not learn about the incident until she heard her mother screaming, after Rosie left. Both Grimes and Clark testified that Rosie had confronted Colbert, but from where they stood, lacking a good vantage point, neither saw Rosie touch or threaten Colbert. Grimes and Clark testified that they had remained on Colbert's property for only five minutes.

The jury received "to convict" instructions for second degree assault and the lesser included offense of fourth degree assault.<sup>2</sup> The jury also received a special verdict form, asking

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<sup>1</sup> Before the jury trial, Colbert sent a letter to a deputy involved in the case, retracting her initial statement. In the letter, Colbert claimed that (1) Rosie did not touch her and (2) she had not been thinking properly when she first called the police because she had mixed and consumed alcohol, anti-depressants, and blood pressure medication. At trial, Colbert testified that she felt pressured to change her statement because she feared retaliation from Rosie's wife and worried about the potential length of Rosie's confinement time, but she asserted that her initial statement to the police had been accurate.

<sup>2</sup> Jury instruction number 14 provided:

To convict the defendant of the crime of assault in the fourth degree as a lesser included crime of assault in the second degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 21st day of July, 2008, the defendant intentionally assaulted Cathy Colbert; and
- (2) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

whether Rosie had committed fourth degree assault<sup>3</sup> against a family or household member. Rosie made no objections and took no exceptions to the jury instructions.

The jury found Rosie guilty of fourth degree assault and answered “yes” on the special verdict form. The trial court sentenced Rosie to 365 days confinement, with 245 days suspended, to serve 120 days minus credit for time served.

Rosie appeals.

### ANALYSIS

Rosie argues that insufficient evidence supports his conviction for fourth degree assault. This argument fails.

#### I. Standard of Review

A defendant may challenge the sufficiency of the evidence for the first time on appeal. RAP 2.5(a)(3); *City of Seattle v. Slack*, 113 Wn.2d 850, 859, 784 P.2d 494 (1989) (“Due process

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CP at 33.

<sup>3</sup> Jury instruction number nine provided:

An assault is an intentional touching or striking of another person that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act, with unlawful force, done with intent to inflict bodily injury upon another, tending, but failing to accomplish it, and accompanied with the apparent present ability to inflict bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

An assault is also an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

CP at 28.

requires the State to prove its case beyond a reasonable doubt; thus, sufficiency of the evidence is a question of constitutional magnitude and can be raised initially on appeal.”) (citing *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983)). When reviewing a challenge to the sufficiency of evidence, this Court views the evidence in the light most favorable to the State and determines whether a rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Hernandez*, 85 Wn. App. 672, 675, 935 P.2d 623 (1997).

In challenging the sufficiency of the evidence, the defendant admits the truth of the State’s evidence and all inferences reasonably drawn from it. *Hernandez*, 85 Wn. App. at 675. Under this standard, reviewing courts need not be convinced of the defendant’s guilt beyond a reasonable doubt; they must determine only whether substantial evidence supports the trial court’s verdict. *State v. Potts*, 93 Wn. App. 82, 86, 969 P.2d 494 (1998).

## II. Sufficient Evidence Supports Fourth Degree Assault Conviction

Viewed in the light most favorable to the State, the evidence presented would permit any rational trier of fact to find all the essential elements for fourth degree assault beyond a reasonable doubt. A person commits fourth degree assault “if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.” RCW 9A.36.041(1).

Colbert testified that Rosie had been “screaming angry” at her and “grabbed [her] by the throat.” Cotte testified that when he arrived at Colbert’s house, Colbert cried and shook “like something bad had just happened.” Based on this evidence, a rational trier of fact could find beyond a reasonable doubt that Rosie assaulted Colbert. Accepting the truth of the State’s

evidence and all reasonable inferences that may be drawn from it, as *Hernandez* requires, we hold that the State presented sufficient evidence to support Rosie's conviction.

Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

We concur:

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